

Department of Pesticide Regulation's Procedures for Conducting U.S. Environmental Protection Agency Worker Protection Standard Tier 1 Overview Inspections

Date	April 4, 2002
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Attachment to	ENF 02-13
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Distribution	County Agricultural Commissioners
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Referral	If you have any questions pertaining to this document, please contact your Senior Pesticide Use Specialist Liaison.
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Background	<p>On March 14, 2000, the U.S. General Accounting Office (GAO) recommended that the U.S. Environmental Protection Agency (U.S. EPA) strengthen its oversight of states' implementation and enforcement of the Worker Protection Standard (WPS), and clearly define, "What constitutes a WPS inspection?" The GAO Report stated that the U.S. EPA needed to establish minimum requirements for a WPS inspection for reporting purposes under the State Cooperative Agreements. Beginning in June 2000, the U.S. EPA has been working with the states to address the GAO recommendations. The U.S. EPA WPS Inspection Guidance Document (WPSIGD) was completed in July 2001. The following procedures were developed to establish a Department of Pesticide Regulation (DPR) overview process that meets the federal WPS standard.</p>
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Federal Requirements – Tier 1	State lead agencies and tribes may report agricultural-use inspection activities as a WPS Tier 1 Compliance Monitoring Inspection as part of the grant work plan when the following conditions are met:
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- (1) Pesticides with WPS labeling have been used on the establishments.
- (2) All the WPS agricultural-use Inspection Elements as described in section VI of the WPSIGD have been covered in the inspection. *(A copy of the WPSIGD will be provided to each regional office; however, if overviews are conducted according to the procedures in this document and DPR's Standard Inspection Procedures, in the required inspection elements will be covered.)*

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Federal Requirements – Tier 1, continued

(3) The inspector has interviewed one or more available employed workers and/or handlers as part of the inspection. If you are unable to interview any employees, you can still count the inspection as a Tier 1 if you explain why no employees were interviewed. Explanations should be documented on the supplement form. See Inspection Interviews for more information.

(4) The inspection is conducted during the time frame that starts at the time pesticides are applied and ends 30 days after expiration of the restricted reentry interval.

U.S. EPA expects federal, state and tribal inspectors to cover, to the fullest extent possible, all aspects of an establishment's responsibilities under the WPS. The final inspection report shall provide a written explanation for Inspection Elements not addressed during the inspection. Furthermore, the U.S. EPA will not consider an agriculture use inspection as a WPS Tier I Compliance Monitoring inspection unless the inspector has been successful in interviewing workers and handlers or has provided written explanation for why no workers and/or handlers were interviewed.

Conducting a Tier 1 WPS Overview

A Tier 1 WPS overview is a type of routine inspection. For cause inspections are not counted as Tier 1 WPS inspections. In order to complete a Tier I WPS overview you must conduct inspections that cover all of the WPS criteria applicable to employer being inspected. In most cases this will require combining different types of inspections and completing the WPS Supplemental form. The typical combinations are listed below by employer type:

Grower (employer of handlers and field workers) – a Headquarter and Employee Safety Inspection, a Use Monitoring Inspection **or** a Fieldworker Safety Inspection, a WPS Inspection Report Supplement Inspection and a U.S. EPA Activity Coversheet.

Grower (employer of handlers, fieldwork performed by farm labor contractors) – a Use Monitoring Inspection, a Headquarter and Employee Safety Inspection, a WPS Inspection Report Supplement Inspection and a U.S. EPA Activity Coversheet.

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Conducting a Tier 1 WPS Overview, continued

Grower (employer of field workers, all applications performed by pest control businesses) – a Fieldworker Safety Inspection, Headquarter and Employee Safety Inspection, WPS Inspection Report Supplement Inspection and a U.S. EPA Activity Coversheet.

Pest Control Business – a Use Monitoring Inspection, Headquarter and Employee Safety Inspection, WPS Inspection Report Supplement Inspection and a U.S. EPA Activity Coversheet.

Farm Labor Contractor - Fieldworker Safety Inspection, WPS Inspection Report Supplement Inspection and an EPA Activity Coversheet. As part of the Fieldworker Safety Inspection you should verify the application specific information display at the grower central location. Violations of this criteria are the responsibility of the grower and should be documented separately (i.e. using a Violation Notification or Headquarter and Employee Safety Inspection) as well as on the WPS Inspection Report Supplement.

Inspection Interviews

Tier 1 inspections should include interviews with employers¹, and one or more handlers or workers. The WPS Inspection Report Supplement provides a space to document the number and type of persons interviewed. Interviews with handlers and workers should be conducted separately from employer interviews, ideally away from management personnel. If necessary, try to arrange to have an interpreter available to conduct employee interviews. Use of an interpreter employed by the company being inspected should be utilized only as a last resort.

When an inspection is conducted, and you are unable to interview either handler or worker employees, you must provide a brief explanation as to why you were unable to conduct these interviews. If you were unable to conduct employee interviews due to a language barrier, you must describe the steps you took to address that situation. (Example: No worker interviews were conducted because they didn't speak English. None of the CAC bilingual inspectors were available. I tried to locate an interpreter but was unsuccessful.)

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¹ An agricultural employer, as defined by 40 CFR § 170.3, may include owners and managers of agricultural establishments and employers and managers of agricultural workers and handlers (i.e., commercial applicator employers and farm labor contractors).

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Inspection Interviews, continued

Other reasons for not conducting an interview could include:

- (a) No employees are employed at the time of the inspection;
- (b) Employer does not consent to allow employees to be interviewed;
- (c) Employees do not consent to being interviewed for personal reason (such as fear of retaliation.)

In addition to the interview questions listed on the WPS Inspection Report Supplement, the following list indicates the criteria, currently on county inspection forms that should be addressed in interviews. If possible, interview each type of person indicated:

Pesticide Use Monitoring Inspection PR-ENF-021

<u>Criteria</u>	<u>Section</u>	<u>Interview</u>
Employee Contacted, Working Alone, Danger	6730	handler
Restricted Material Use Supervised	6406	handler
Handler Trained	6724	handler

Fumigation Use Monitoring Inspection PR-ENF-144

<u>Criteria</u>	<u>Section</u>	<u>Interview</u>
Employee Contacted, Working Alone, Danger	6730	handler
Restricted Material Use Supervised	6406	handler
Handler Trained	6724	handler
Accident Response Plan	6780(d)	handler
Two Trained Employees	6784	handler

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Inspection Interviews, continued

Fieldworker Safety Inspections PR-ENF – 0XX

Criteria	Section	Interview
Hazard Communication A-9	6761	worker/employer
Field Worker Training	6764	worker/employer
Emergency Medical Care Knowledge	6766(b)	worker/employer
Field Entry After Pesticide Application	6770	worker/employer
Early Entry	6771	worker/employer
Posting Compliance	6776	worker/employer
Employer Provided/Employee Utilized PPE	6702(b, c)	worker/employer

Headquarter And Employee Safety Inspection PR-ENF - 022

Criteria	Section	Interview
Notice Prior to Application	6618	worker/handler/ employer
Application Completion Notice	6619	employer
Emergency Medical Care Planned	6726	employer
Application Specific Info	6723.1/ 6761.1	worker/ handler/ employer
All Hazard Communication and Training Criteria	6723/ 6761/ 6724/ 6764	worker/ handler/ employer

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WPS Inspection Report Supplement The supplemental form will be used in completing WPS overviews until the county inspection forms are updated to reflect the additional criteria.

Header Information

WPS Labels Used: Check to verify that WPS labeled pesticides have been used in the last 30 days plus REI

Date Started /Ended: Since the Tier 1 package may contain several inspections document the time frame involved. Seniors are encouraged to complete the inspection package within a short time frame. Timing is important as it allows the inspector to determine if the field and headquarter information are compatible. For example, is the application you inspected yesterday accurately reflected in the application Specific Information display?

There is no limit on the time frame in which a Tier 1 inspection package is completed. However, each individual inspection, including the Headquarter and Employee Safety Inspection, must be conducted within 30 days of the expiration of a WPS pesticide REI used by the establishment being inspected.

Establishment Type : Indicate all the type(s) of production agriculture engaged in by the establishment.

Crop Types: Indicate all the type(s) of crops grown by the establishment.

Inspection Type(s): Indicate which inspections are included in the package.

Interviews: Indicate the type and number of people interviewed.

Interpreter Used: Indicate if an interpreter was used to conduct interviews. If so, provide name and employer of interpreter.

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WPS Inspection Report Supplement, continued

Additional Interview Questions:

Employer:

Is the employer aware of any employee refusals?

- Identify problems with handlers refusing to wear personal protective equipment (PPE), taking PPE home, following label directions, properly using application equipment, entering posted fields.
- Identify problems with workers entering posted fields or violating other restrictions.

Is the employer aware of any exposure incidents in the last year?

- Identify who provides pesticide information to medical personnel/victim; provides transportation to emergency medical facility.
- Determine if there have been any exposure incidents (including drift); if yes, discuss details of incidents and examine records of incidents if available.

Handlers/ Fieldworkers:

Have the employees experienced retaliation?

- Verify that employees are allowed to comply without employer hindrance?
- Determine if there have been any incidents of retaliation; if yes, discuss details of incidents.

Is the employee aware of any exposure incidents in the last year?

- Identify who provides pesticide information to medical personnel/victim; provides transportation to emergency medical facility.
- Determine if there have been any exposure incidents (including drift), if yes, discuss details of incidents and examine records of incidents if available.

Does the employee receive notification when appropriate?

- When working in a field that is within ¼ mile of a field where entry is restricted, who notifies the employee?
- What is the method of notification?

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Questions and Answers

1. **When does an Agricultural-use inspection NOT count as a WPS Tier 1 inspection?**

An agricultural-use inspection does not count as a WPS inspection if:

- No pesticides with WPS labeling have been used on the establishment, or
- The basic WPS Inspection Elements for routine WPS Agricultural-use inspections are not covered during the inspection, or
- No workers or handlers are interviewed as part of the inspection although employed at the time of the inspection and no written explanation is provided for lack of any interviews.
- The inspection is conducted outside the 30 days after the expiration of an REI window.

2. **Does an inspection of a pest control business count as a WPS Tier 1 inspection?**

Yes, when the pest control business is using a pesticide with WPS label requirements. This type of inspection should include a determination that adequate communications between the commercial applicator and their customers comply with the required information exchange.

3. **Does an inspection of a Farm Labor Contractor count as a WPS Tier 1 inspection?**

Yes, when inspecting crews working in treated fields. This type of inspection should include a check on the application specific display at the grower's central location.

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Questions and
Answers,
continued

4. What approach should be taken in responding to an alleged employee pesticide exposure?

Determine if the county has conducted an investigation on the incident. If not, consult your supervisor and the CAC to determine if an investigation should be initiated. Document information in your Tier 1 package.

5. What approach should be taken in responding to an employee allegation of retaliation?

Seniors will refer the employee to the appropriate Division of Labor Standards Enforcement Office. Seniors will be provided with this information.

6. What approach should be taken in responding to an employer allegation of employee refusal?

Provide the employer with information on DPR's written workplace disciplinary policy. (See ENF 95 – 005) Try to determine the cause of the refusals and, if possible, provide advice on ways to address the problem. Document information in your Tier 1 package.